

AGREEMENT AND DECLARATION OF TRUST
OF THE IACT MEDICAL TRUST

THIS AGREEMENT AND DECLARATION OF TRUST effective on the 1st day of January, 2010, by and between the Indiana cities and towns listed in Appendix A (each a "Municipality") and the Indiana Association of Cities and Towns.

W I T N E S S E T H :

WHEREAS, the Indiana Association of Cities and Towns desired to assist its membership in managing the increasing costs of medical insurance;

WHEREAS, Indiana law permits two or more local public employers to establish a common and unified plan of group insurance for employees, including retired local employees (Indiana Code § 5-10-8-5);

WHEREAS, the Indiana Association of Cities and Towns formed a bipartisan oversight committee (the "Committee") to investigate the creation of a cooperative health benefit arrangement for its members;

WHEREAS, Sharon McShurley, Mayor of the City of Muncie, was appointed Chair of the Committee;

WHEREAS, the following individuals provided dutiful service on the Committee: Larry Breese, Clerk Treasurer of the City of Greenfield; Diana Cordray, Clerk-Treasurer of the City of Carmel; John Dennis, Mayor of City of West Lafayette; John Ditslear, Mayor of the City of Noblesville; Ted Ellis, Mayor of the City of Bluffton; Shawna Girgis, Mayor of the City of Bedford; Matt Greller, Executive Director of the Indiana Association of Cities and Towns; Cecilie Hendrix, Human Resources Director of the Town of Fishers; Allan Kauffman, Mayor of

the City of Goshen; Jeff Rea, Mayor of the City of Mishawaka; Tony Roswarski, Mayor of the City of Lafayette; Bill Schmitt, Mayor of the City of Jasper; and Ernie Wiggins, Mayor of the City of Warsaw;

WHEREAS, the Committee has developed a cooperative health benefit arrangement for the good of all qualified members of the Indiana Association of Cities and Towns;

WHEREAS, to safeguard the assets of this cooperative health benefit arrangement, the parties hereby enter into this Agreement and Declaration of Trust of the IACT Medical Trust;

NOW THEREFORE, in consideration of the mutual promises, terms, conditions and covenants contained herein, the parties agree as follows:

ARTICLE I DEFINITIONS

The following definitions shall govern the following terms for the purpose of this Trust Agreement, unless the covenants state otherwise:

1.1 "Annual Meeting" shall mean a meeting open to all Trustees that shall occur each year on or before December 1.

1.2 "Eligible Employee" means:

- (a) An elected or appointed official of a Participating Employer;
- (b) An employee of a Participating Employer employed on the basis of at least thirty (30) hours of work per week; or
- (c) An individual or group of individuals associated with a Participating Employer that is otherwise approved by Majority Vote.

1.3 "Retired Employee" means:

- (a) A former employee who qualifies for a benefit under Indiana Code § 5-10-8-2.6(e) or § 5-10-8-2.2(g) or any successor statutes; or

(b) A former employee who meets the group insurance participation requirements for retired employees established by the Participating Employer's personnel policy.

1.4 "Majority Vote" shall mean an affirmative vote of a majority of the Trustees with voting privileges in attendance at the Annual Meeting or other scheduled meeting of the Trust.

1.5 "Participating Employer" includes the Indiana Association of Cities and Towns, the Municipalities listed on Appendix A and any Indiana municipality that subsequently adopts this Trust Agreement. A Municipality that fails to remain a member in good standing of the Indiana Association of Cities and Towns may be expelled pursuant to Section 8.5.

1.6 "Trust" shall mean the IACT Medical Trust.

1.7 "Trust Agreement" means this Agreement and Declaration of Trust, as it may be amended from time to time.

1.8 "Trustee" shall mean an appointed or elected individual as set forth in Article IV.

1.9 A "Quorum" is one more than half of the Trustees.

ARTICLE II CREATION OF TRUST

2.1 Establishment of Trust. The settlors, otherwise known as the Participating Employers, hereby declare and establish a trust to be known as the "IACT Medical Trust." Each of the Participating Employers will contribute to the Trust the sum of ten dollars (\$10.00) on or before the effective date of this original Agreement. The Participating Employers may transfer to the Trust such other property, whether real or personal, tangible or intangible, as may be permitted by law. The Trustees agree to hold such property, and accretions and additions thereto from whatever source, subject to the terms and provisions of this Trust Agreement.

2.2 Purpose. This Trust is established for the purpose of providing medical, dental and vision coverage and related administrative services for the benefit of persons who may from time to time be beneficiaries hereunder.

2.3 Trust Assets. The Trustees shall hold and disburse all monies received from any Participating Employer under this Trust Agreement, and any other monies and property which may come into their hands hereunder, according to the powers and duties and for the purposes set out in this Trust Agreement.

2.4 Permissible Forms of Coverage. This Trust is authorized to provide medical, dental and vision coverage for employees, dependents and retired employees of the Participating Employers.

ARTICLE III PREMIUM CONTRIBUTIONS AND COVERAGE OBLIGATIONS

3.1 Premium Contributions. Each Participating Employer shall pay its required premium contribution to the Trust on or before the tenth (10th) day of each month. A Participating Employer that fails to pay its required premium contribution on or before the tenth (10th) day of each month may be required to pay interest at the rate of three percent (3%) in excess of the prime rate at JPMorgan Chase Bank, N.A. or its successor, per annum, on all amounts due and unpaid. The Trustees shall also charge such Participating Employer any costs of collection of such due and unpaid amounts, including, but not limited to, reasonable attorney fees, court costs and other costs of collection.

3.2 Coverage Obligation. Each Participating Employer is required to provide medical coverage to its Employees exclusively through this Trust unless other medical coverage is

approved by Majority Vote. The requirement set forth in this section 3.2 is intended to minimize the risks of adverse selection.

ARTICLE IV DURATION AND TERMINATION OF TRUST

4.1 Initial Membership Period; Continuation: The Trust herein created and this Trust Agreement shall exist for an initial term of three (3) years from the date of the execution hereof, and shall continue thereafter unless terminated by Majority Vote. In the event that a Majority Vote resolves to terminate the Trust, the Trust will continue past the date of the Trustees action to terminate this Trust and will terminate not less than sixty (60) days from the date of the Trustees' termination action. Notwithstanding any provision to the contrary, if the Trust shall violate any rule against perpetuities, accumulation or other similar law, the Trustees are hereby directed to terminate such Trust on the date limited by such rule or law.

4.2 Termination. In the event of termination of the Trust, the Trustees shall apply all funds to pay any and all obligations of the Trust and distribute and apply any remaining surplus to the each Participating Employer in proportion to its percentage of total premium payable during the previous six (6) month period (subject to Section 8.5). In the case of any deficit, each Participating Employer shall be assessed in proportion to its percentage of total premium payable during the previous six (6) month period. For illustrative purposes only, assume that the City of ABC contributed twenty percent (20%) of the total premium paid to the Trust during the prior six (6) month period. In the event of a deficit, the City of ABC would be responsible for twenty percent (20%) of the total supplementary payment. Alternatively, the Trustees may require that any supplementary payments be made by each Participating Employer according to any other equitable formula, provided that such formula is approved by an affirmative vote of three-quarters (3/4) of all Trustees.

ARTICLE V
TRUSTEES

5.1 Composition of Board of Trustees. The Board of Trustees shall consist of twelve (12) Trustees as set forth below:

(a) Six (6) Trustees shall be elected by the Participating Employers. Each Trustee elected pursuant to this subsection 5.1(a) must be an official of a Participating Employer and shall serve a three (3) year term. Each Trustee may be elected to unlimited successive terms.

(b) Four (4) Trustees shall be appointed by the Indiana Association of Cities and Towns. Each Trustee appointed pursuant to this subsection 5.1(b) must be an official of a Participating Employer and shall serve a three (3) year term. Each Trustee may be elected to a maximum of two successive terms.

(c) One (1) Trustee shall be an independent financial expert appointed by the Indiana Association of Cities and Towns. The Trustee appointed pursuant to this subsection 5.1(c) shall be a certified public accountant. The Trustee shall serve one year terms and is eligible for reappointment annually.

(d) One (1) Trustee shall be the Executive Director of the Indiana Association of Cities and Towns. This Trustee shall serve in an *ex officio* capacity for an indefinite term.

It is the intent of the Participating Employers that the Trustees elected pursuant to subsection 5.1(a) and appointed pursuant to subsection 5.1(b) shall serve staggered terms. To effectuate this intent, the initial term of one or more of these Trustees shall be abbreviated.

5.2 Compensation and Expenses. Trustees shall receive no compensation for their services as Trustees. The Trustees shall be reimbursed by the Trust for all reasonable and necessary expenses which the Trustees may incur in the performance of their duties.

5.3 Liability of Trustees. It is the intention of the settlors (and consistent with the purposes of the Trust) that the Trustees carry out their duties without liability for the actions of others, including other Trustees, predecessor Trustees, agents, attorneys, employees, consultants, independent contractors or insurance carriers. No Trustee shall be liable or responsible for any acts or defaults of any other Trustee or predecessor Trustee, or for failing to compel any other Trustee not to breach the Trust, or for any loss or expense resulting from or occasioned by anything done or neglected to be done in the administration of the Trust prior to his becoming a Trustee, nor shall any successor Trustee be required to inquire into or take any notice of the prior administration of the Trust, compel a predecessor Trustee to deliver Trust property, or compel a predecessor Trustee to redress a breach of trust made by the predecessor Trustee. No Trustee acting hereunder shall be liable for any mistake in judgment or other action taken or omitted by him in good faith, nor for the acts of any insurance carrier, agent, consultant, employee, independent contractor or attorney; nor shall any Trustee be individually or personally liable for any of the obligations of the Trustees acting as such under the Trust. Trustees shall not be liable for claims brought by third parties for injuries suffered in connection with the Trust. Trustees shall not be liable for not complying with the prudent-investor rule stated in Indiana Code § 30-4-3.5-1 *et seq.* or any successor statutes; nor shall any Trustee be liable for loss incurred through the investment of Trust funds or failure to invest Trust funds.

5.4 Meetings. The Trust shall conduct one Annual Meeting. It is anticipated that the Trust shall conduct at least three other meetings each calendar year. The Trust shall also hold

such special meetings at such time and place as may be called by the Trust chairperson. A Quorum shall be necessary to conduct business.

ARTICLE VI POWERS AND DUTIES OF THE TRUSTEES

6.1 Owners of Assets. The Trustees shall, subject to the Trust hereby created, be the owners of the assets held in Trust pursuant to this Agreement and shall be entitled to exercise each and every incident of ownership not inconsistent therewith including, by way of illustration only and not by way of limitation, the power to sell or assign any assets, to receive surplus derived from contracts, to receive income and capital gains on assets, to receive payments of any kind which may be made on assets and to convert from one to another.

6.2 Service Providers. The Trustees shall be permitted to engage in any and all efforts deemed reasonable and appropriate to create and operate a cooperative health benefit arrangement for Indiana cities and towns. Such efforts may include, but shall not be limited to, contracting with actuaries, accountants, attorneys, consultants, insurance companies, stop-loss carriers, wellness consultants or other vendors.

6.3 Full and Exclusive Authority. The Trustees shall have full and exclusive authority to administer the Trust in accordance with the terms and conditions hereof.

6.4 Interpretation of Agreement. The Trustees will have full power and authority to construe the provisions of this Agreement. Any such construction of this Agreement shall be binding upon all parties hereto.

6.5 Governance. The Trustees shall have the responsibility and the power to make rules and regulations for the government, management, and administration of the Trust to carry out the provisions of this Agreement.

6.6 Other Powers. In addition to the specific powers enumerated herein, the Trustees and the Trustees' successors are hereby granted all the powers accorded Trustees under the Indiana Trust Code, as amended from time to time, except as to matters pre-empted by federal law. Furthermore, the Trustees shall have the authority to do all acts, whether or not expressly authorized, which may be necessary or proper for the protection of the property held hereunder or for the carrying out of any duty under this Agreement, provided such acts are not in direct conflict with the terms of this Agreement or applicable federal or state law.

6.7 Voting. All Trustees shall be afforded one (1) vote except the IACT Executive Director. The Trustees are encouraged to resolve all material issues impacting the Trust by consensus; however, in the event that consensus is not possible, the Trustees are authorized to act upon a Majority Vote except as otherwise noted by this Agreement.

ARTICLE VII ACCOUNTS, INVESTMENTS AND AUDIT

7.1 Accounts. The Trust shall establish and maintain such bank accounts as the Trustees, from time to time, shall determine to be proper. All premium contributions and other monies received on behalf of the Trust shall be remitted to the depository bank or banks for deposit within twenty four (24) hours of receipt.

7.2 Investments. The Trustees shall have the power and discretion to invest and reinvest any property of the Trust solely in cash or cash equivalents. For purposes of this Agreement, the term cash equivalent shall include U.S. Government and Agency obligations, commercial paper rated "A1" or "A2" by Standard and Poor's or "P1" or "P2" by Moody's, certificates of deposit issued by FDIC insured U.S. Banks, custodial bank's short-term reserve funds and no-load money market mutual funds with average maturities not exceeding ninety (90) days.

7.3 Annual Audit. The Trustees shall retain a certified public accountant to conduct an annual audit of the financial affairs of the Trust. This audit shall be filed with the Indiana Department of Insurance and a copy shall be furnish to each Participating Employer.

ARTICLE VIII ADDITION, WITHDRAWAL AND EXPULSION

8.1 New Participating Employers. New Participating Employers may join the Trust upon a Majority Vote. New Participating Employers may be admitted subject to the payment of such sums or the imposition of such conditions as shall be established at the time an offer of participation in the Trust is made.

8.2 Withdrawal. No Participating Employer may withdraw from the Trust prior to December 31, 2012. Thereafter, a Participating Employer may withdraw from participation in the Trust effective the first day of any Trust Year by delivering written notice of the withdrawal to the Trust and the Indiana Association of Cities and Towns at least eight (8) months prior to the first day of that Trust Year. A Participating Employer shall pay to the Trustees all assessments due and payable preceding the effective date of the withdrawal. A Participating Employer that withdraws from the Trust shall not have any right or interest in any asset of the Trust. Notwithstanding the foregoing, the Trust shall pay claims of the withdrawing Participating Employer incurred prior to date of such withdrawal but not reported until after said Participating Employer has withdrawn from the Trust, subject to reasonable limitations imposed by the Trustees.

8.3 Rescission of Notice of Withdrawal. A Participating Employer that has given written notice of withdrawal to the Trust may rescind said notice within ninety (90) days after delivery of said notice of withdrawal. Such rescission shall be effective only if it is approved by

a vote of two-thirds (2/3) of the Trustees with voting privileges. If written request to rescind is delivered more than ninety (90) days after notice of withdrawal was provided, but prior to the effective date of withdrawal, the withdrawal notice shall be rescinded only upon written approval by ninety percent (90%) of the Trustees with voting privileges.

8.4 Consequences of Withdrawal. Participating Employers that withdraw from the Trust may not be readmitted to the Trust for three (3) years following the effective date of their withdrawal.

8.5 Expulsion. By the vote of at least two-thirds (2/3) of the entire membership of the Trustees, if a hearing is requested, any Participating Employer maybe expelled. Such expulsion may be carried out for one or more of the following reasons:

- (a) Failure to make any payments due to the Trust.
- (b) Failure to remain a member in good standing with the Indiana Association of Cities and Towns.
- (c) Failure to furnish full cooperation with the Trust's attorneys or any agent, employee, officer or independent contractor of the Trust relating to the purpose and powers of the Trust.
- (d) Failure to comply with the terms of this Trust Agreement, including, but not limited to, the obligation to provide medical coverage exclusively through this Trust.
- (e) Failure to carry out any obligation of a Participating Employer which impairs the ability of the Trust to carry out its purpose or powers.

No Participating Employer may be expelled except after written notice from the Trustees of the alleged failure along with a reasonable opportunity of not less than thirty (30) days to cure the alleged failure. The notice shall specify that the Participating Employer shall be expelled unless

the failure is cured and the date upon which expulsion shall occur if no hearing is requested. The Participating Employer, in writing, may request a hearing before the Trust. The request shall be made prior to the date by which the failure is to be cured. The date for the hearing will be set by the President, who shall call for a Trust meeting to take place. The date for a hearing shall not be less than seven (7) days after the expiration of the time to cure has passed. A decision by the Trust to expel a Participating Employer after notice and hearing and a failure to cure the alleged defect shall be final unless the Trust shall be found by a court to have committed a gross abuse of discretion. After a hearing, the Trustees may establish the date at which the expulsion of the Participating Employer shall be effective at any time not less than forty (40) days after the vote expelling the Participating Employer has been made by the Trustees. If the expulsion is for a failure to make payments due to the Trust the effective date of the expulsion may be at any time after the vote expelling the Participating Employer. Also, if the date of expulsion is less than forty (40) days before the beginning of the next fiscal year, the Trust may expel at the end of the fiscal year. If the motion to expel the Participating Employer made by the Trustees or a subsequent motion does not state the time at which the expulsion shall take place, such expulsion shall take place forty (40) days after the vote expelling the Participating Employer, or at the beginning of the next fiscal year, whichever date is sooner. After expulsion, the former Participating Employer shall continue to be fully obligated for all obligations which were created during the term of its membership as if it was still a Participating Employer of the Trust.

ARTICLE IX ACCESS TO CLAIMS EXPERIENCE

9.1 Right of Participating Employer to Claims Experience. Each Participating Employer shall be entitled to access its individual claims experience upon written request by the Mayor or chief official of the Participating Employer.

9.2 Rights of Beneficiaries to Information Relating to the Administration of the Trust:

Employees and other individual beneficiaries of the Trust shall have the right to access and amend their own protected health information to the extent set forth by the HIPAA Privacy Rule. Employees and other individual beneficiaries of the Trust shall also be entitled to review aggregate, de-identified claims information relating to beneficiaries of the entire Trust. However, except as approved by an affirmative vote of the Trustees, Employees and other individual beneficiaries shall not be entitled to information concerning any other matter related to the administration of the Trust and shall not have the right to inspect the Trust property, the Trustees' accounts, or any other documents concerning the administration of the Trust, including, but not limited to, claims experience of some or all beneficiaries who receive medical coverage through a specific Participating Employer. For example, an Employee of a Participating Employer is not entitled to review or receive the claims experience, whether de-identified or not, of some or all beneficiaries who receive medical coverage through his/her Participating Employer.

ARTICLE X
MEWA FINAL RULE

10.1 Fully Assessable Contract. This is a fully assessable contract. In the event the Trust is unable to pay its obligations, Participating Employers will be required to contribute through equitable assessments the money necessary to meet any unfulfilled obligations.

10.2 Examinations by Indiana Department of Insurance. The Commissioner of the Indiana Department of Insurance or any person appointed by the Commissioner shall have the power to examine the affairs of the Trust and, for such purposes, shall have free access to all the books, records, and documents that relate to the business of the Trust and may examine under oath its Trustees or directors, officers, agents, and employees in relation to the affairs,

transactions, and conditions of the Trust. Expenses of the examination shall be paid for by the Trust as provided in Indiana Code § 27-1-34-6. The examination shall be conducted in accordance with Indiana Code § 27-1-3.1 and may cover financial or market conduct issues.

ARTICLE XI MISCELLANEOUS

11.1 Amendment. This Trust Agreement may be amended in writing at any time by an affirmative vote of ninety percent (90%) of Trustees in attendance at a scheduled meeting of the Trustees.

11.2 Governing Law. This Trust is created and accepted in the State of Indiana and all questions pertaining to the validity or construction of this Trust Agreement and of the acts and transactions of the parties hereto shall be determined in accordance with the laws of the State of Indiana, except as to matters governed by federal law. Unless otherwise required by law, all disputes shall be litigated in Marion County, Indiana.

11.3 Tax-Exempt Status. The Trust is an organization formed, operated and funded by political subdivisions to pool their health insurance risks. The Trust is intended to qualify for exemption from federal taxation under section 115(1) of the Internal Revenue Code of 1986, as amended. See Revenue Ruling 90-74.

11.4 Specific Provisions. Should any provision of this Trust Agreement be held to be unlawful, or unlawful as to any person or instance, such fact shall not adversely affect the other provisions herein contained or the application of said provisions to any other person or instance, unless such illegality shall make impossible the functioning of the plan.

11.5 Persons Dealing With The Trustees. No person, firm or corporation dealing with the Trustees shall be obligated to see to the application of any property of the Trust, or be

obligated to see that the terms of the Trust have been complied with, or be obligated to inquire into the necessity or expediency of any act of the Trustees, and every instrument executed by any Trustees shall be conclusive in favor of any person, firm or corporation relying thereon, that:

(a) At the time of delivery of said instrument the Trust was in full force and effect.

(b) Said instrument was effected in accordance with the terms and conditions of this Trust Agreement, and

(c) The Trustee or Trustees, as the case may be, were duly authorized and empowered to execute such instrument.

11.6 Signatures. Each Participating Employer warrants and represents that it has executed this Trust Agreement pursuant to a binding resolution of its governing board authorizing and directing said signatory to enter this Trust Agreement on behalf of said Participating Employer, and that said resolution was adopted in public session in compliance with law.

11.7 Execution in Counterparts. This Agreement may be signed in multiple counterparts, and each counterpart shall be deemed part of a single, integrated instrument.

APPENDIX A

[INSERT NAMES OF CITIES AND TOWNS]

IN WITNESS WHEREOF, the undersigned have agreed to this Agreement and
Declaration of Trust of the IACT Medical Trust

APPROVED:

DATE: _____

CITY OF WEST LAFAYETTE
BOARD OF PUBLIC WORKS AND SAFETY

John R. Dennis, Mayor

Sana G. Booker, Member

Bradley W. Marley, Member

Attest:

Clerk-Treasurer Judith C. Rhodes